



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

**www.state.tn.us/humanserv/
CITIZENS PLAZA BUILDING
400 DEADERICK STREET
NASHVILLE, TN 37248
Telephone 615-313-4700 TTY 1-800-270-1349
Fax 615-741-4165**

PHIL BREDESEN
Governor

VIRGINIA T. LODGE
Commissioner

**2010 LEGISLATIVE SUMMARY
FOR
THE DEPARTMENT OF HUMAN SERVICES**

Note to Reader: This summary has been organized into program categories. The categories do not mean that the Act necessarily has direct, significant programmatic or fiscal impact. The reference to the various programs may mean only that the Act is, or may be, of interest to, or has only indirect impact on the program, or that the program simply needs to be aware of the Act and how it might affect some aspect of the program.

If you wish to see the full text of any of these Acts, go to:

<http://www.state.tn.us/sos/acts/index.htm> and look under the 2010 Public Acts and click on the series in which the Act you are searching is located.

If you need further interpretation of any of these Public Chapters, contact Nathalie Essex, Legislative Coordinator, at (615) 313-6630.

INDEX OF PUBLIC CHAPTER SUMMARIES

ADULT PROTECTIVE SERVICES	4
PUBLIC CHAPTER 733 (House Bill 2941 by Hackworth / Senate Bill 2903 by McNally)	4
PUBLIC CHAPTER 817 (Senate Bill 0444 by Overbey/ House Bill 0608 by Stewart)	5
PUBLIC CHAPTER 898 (House Bill 2778 by Hackworth/ Senate Bill 2832 by Berke).....	5
PUBLIC CHAPTER 1084 – (House Bill 2284 by Ferguson/ Senate Bill 2294 by Kyle)	6
CHILD CARE	7
PUBLIC CHAPTER 750 (Senate Bill 2988 by Barnes/House Bill 3263 by Johnson).....	7
PUBLIC CHAPTER 789 (Senate Bill 3867 by Kyle/ House Bill 3826 by Cooper)	8
PUBLIC CHAPTER 964 (House Bill 3196 by Faulkner /Senate Bill 3169 by Burchett)	9
PUBLIC CHAPTER 1132 (Senate Bill 3804 by Marrero/House Bill 3947 by Kernell)	9
CHILD SUPPORT.....	10
PUBLIC CHAPTER 888 (Senate Bill 3001 by Barnes / House Bill 3423 by Litz)	10
PUBLIC CHAPTER 901 (Senate Bill 2818 by Faulk /House Bill 3647 by Stewart).....	11
PUBLIC CHAPTER 915 (Senate Bill 2341 by Overbey /House Bill 2372 by Montgomery)	13
PUBLIC CHAPTER 924 (Senate Bill 3002 by Berke /House Bill 3427 by Hackworth)	14
PUBLIC CHAPTER 1085 (Senate Bill 2472 by Watson, Johnson / House Bill 2454 by Lynn).....	14
COMMUNITY SERVICES	14
PUBLIC CHAPTER 626 (Senate Bill 3870 by Kyle/ House Bill 3804 by Winningham).....	14
CIVIL RIGHTS COMPLIANCE.....	14
PUBLIC CHAPTER 765 (Senate Bill 3408 by Harper/House Bill 3521 by J. DeBerry).....	15
CONFIDENTIALITY	15
PUBLIC CHAPTER 862 (House Bill 2651 by K. Brooks/Senate Bill 2563 by Bunch).....	15
DISABILITY DETERMINATION/VOCATIONAL REHABILITATION.....	15

PUBLIC CHAPTER 674 (Senate Bill 2439 by Watson / House Bill 2473 by Lynn)	15
PUBLIC CHAPTER 865 (Senate Bill 2959 by Watson/House Bill 3049 by Favors)	16
PUBLIC CHAPTER 734 (Senate Bill 3338 by Henry / House Bill 3139 by Brooks)	16
PUBLIC CHAPTER 1100 (House Bill 3625 by Maddox / Senate Bill 3341 by McNally)	17
FAMILIES FIRST	19
PUBLIC CHAPTER 1056 (Senate Bill 2768 by Ford/House Bill 2644 by Cooper)	19
FISCAL	19
PUBLIC CHAPTER 1091 – House Bill 2822 by Cobb/ Senate Bill 2839 by Stewart)	19
PUBLIC CHAPTER 1098 (House 3353 Curtiss/ Senate Bill 3598 Ketron)	20
PUBLIC CHAPTER 1113 (House Bill 3169 by Curtiss/ Senate Bill 3135 by McNally)	23
OFFICE OF THE GENERAL COUNSEL	25
PUBLIC CHAPTER 618 (Senate Bill 2613 by McNally/House Bill 2576 by Turner)	25
PUBLIC CHAPTER 1070 (House Bill 3351 by Curtiss/ Senate Bill 3549 by Ketron)	25
PUBLIC CHAPTER 1125 (Senate Bill 3385 by Marrero/ House Bill 3475 by Kernell)	25
PERSONNEL	26
PUBLIC CHAPTER 748 (Senate Bill 3848 by Kyle / House Bill 3836 by M. Turner)	26
PUBLIC CHAPTER 794 (Senate Bill 2146 by Ford / House Bill 2101 by Towns)	26
PUBLIC CHAPTER 826 (Senate Bill 3590 by Ketron / House Bill 3389 by Moore)	27
TENNCARE/MEDICAID and DISABILITY DETERMINATION SERVICES	27
PUBLIC CHAPTER 658 (Senate Bill 3529 by Overbey/House Bill 3863 by Coleman)	27
PUBLIC CHAPTER 725 (Senate Bill 3522 by Overbey/House Bill 3861 by Coleman)	28
PUBLIC CHAPTER 865 (Senate Bill 2959 by Watson/House Bill 3049 by Favors)	16
PUBLIC CHAPTER 1065 (House Bill 3114 by S. Jones/ Senate Bill 3101 by Marrero)	31
MISCELLANEOUS	32
PUBLIC CHAPTER 706 (Senate Bill 3013 by Tracy / House Bill 3007 by Marsh)	32

ADULT PROTECTIVE SERVICES

PUBLIC CHAPTER 733 (House Bill 2941 by Hackworth / Senate Bill 2903 by McNally)

Section 1 – The Act revises the law so that in addition to missing senior citizens, the present law's alert provisions would also apply to a person of any age who suffers from a documented case of dementia, whose whereabouts are unknown, and who is believed to be in danger because of dementia or physical impairment, and is believed to be unable to return to safety without assistance. Under present law, when a local law enforcement agency receives notice that a senior citizen is missing, the agency may require the senior citizen's family or legal guardian to provide documentation, including, but not limited to, medical records, if available, of the senior citizen's impaired mental condition. This bill revises this provision so that a caregiver of a missing senior citizen would have to give a statement verifying the senior citizen's condition. For a missing citizen with dementia, there would have to be medical documentation of a person's dementia prior to a search being initiated

Additionally, this act revises alert provisions to instead provide that additional local resources that can be utilized, including, but not limited to, reserve units, emergency service units, air support, K-9 units, or automated phone dialer capabilities, must be identified and maintained as part of the local law enforcement agency's program. Local law enforcement agencies are strongly encouraged to collaborate with surrounding law enforcement agencies to identify additional resources available that will help aid in the safe recovery of endangered missing persons. Local law enforcement agencies may choose to seek the assistance of nonprofit organizations including, but not limited to, A Child is Missing, the Alzheimer's Association, or the Center for Human Identification.

The alert may contain all appropriate, descriptive information available, including, but not limited to, the location last seen, vehicle information, clothing worn, and photo, if available.

Lastly, the act encourages local law enforcement agencies to develop area-specific protocols for implantation of the missing senior citizen alert program; as well as encourages the Tennessee bureau of investigation, the Tennessee Sheriffs' Association and the Tennessee Association of Chiefs of Police to educate law enforcement as to the requirements of the missing senior citizen alert program by methods including, but not limited to: newsletters, press releases, and educational instruction through the Tennessee Law Enforcement Training Academy.

Section 2 – The Act became effective on July 1, 2010.

PUBLIC CHAPTER 817 (Senate Bill 0444 by Overbey/ House Bill 0608 by Stewart)

This Act establishes the basis for determining jurisdiction between states for proceedings involving guardianship or conservatorship actions involving disabled adults and for procedures used in litigation in those types of cases.

It also clarifies the role of the Department of Human Services' Adult Protective Services program in the context of this new law by stating that none of the provisions of this law will supersede actions by the Department under the Adult Protection Act. Therefore, orders entered by the courts entered under the Adult Protection Act will not be affected by actions under this Act, including those involving emergency custody and appointment of a temporary guardian to expend funds of an adult for the adult's care as a result of order of the court under the APA.

However, actions between states concerning jurisdiction of a state for actions involving protective services of adults will be governed by the provisions of the Uniform Act and actions by the Department under the Adult Protection Act would be subject to this Act's requirements.

The Act will become effective January 1, 2011.

PUBLIC CHAPTER 898 (House Bill 2778 by Hackworth/ Senate Bill 2832 by Berke)

This Act establishes a legal procedure in the Adult Protection Act that will allow relatives of an adult, as defined in the Act, to file a petition for an immediate ex parte order of protection on behalf of the adult to prevent a violation of T.C.A. § 71-6-117 which currently makes it a criminal offense for the knowing abuse, neglect or exploitation of adult.

The bill excludes persons who are in the custody of intermediate care facilities for persons with mental retardation and a person while receiving residential services or other services from a community provider through contracts with the Department of Intellectual Disabilities Services (DIDS).

The petition must allege facts that show that the adult for whom the order is sought lacks capacity to consent under the Adult Protection Act.

Notice of the filing of the petition must be served on the Adult Protective Services unit of the Department of Human Services in the county in which the petition is filed so that an investigation can be initiated if necessary. The Department is given the statutory right to intervene in the petition, but is not required to do so or to initiate any action of the Adult Protection Act due to the filing of the petition for the protective order.

The order is effective for 120 days, and the court can:

(1)

- (A) Order the respondent to refrain from committing a violation of this part against an adult;
- (B) Require the respondent to refrain from threatening to misappropriate or from further misappropriating any monies, state or federal benefits, retirement funds or any other personal or real property belonging to the adult, or

- (C) Order the return to the adult or the adult's caretaker or conservator or other fiduciary any monies, state or federal benefits, retirement funds or any other personal or real property belonging to the adult obtained by the respondent as result of exploitation of the adult or as result of any other misappropriation of such funds or property of the adult by the respondent. The court may enter judgment against the respondent for the repayment or return to the adult or the adult's caretaker, conservator or other fiduciary of any monies, government benefits, retirement funds or any other personal or real property belonging to the adult that are under the control of or that have been obtained by the respondent as result of exploitation or misappropriation from the adult. Nothing in the Act will preclude an action for recovery of money or property of the adult under § 71-6-120. The court may, if the amount in question exceeds ten thousand dollars (\$10,000), require any caretaker or custodian of funds appointed under this section to post a bond as required by § 34-1-105.
- (2) Enjoin the respondent from providing care for an adult, on a temporary or permanent basis, anyone who the court finds has engaged in abuse, neglect or exploitation of an adult as defined in title 71, chapter 6, part 1; in any situation involving the care of such adult, whether such actions occurred in an institutional setting, in any type of group home or foster care arrangement serving adults, and regardless of whether such person, facility or arrangement serving adults is licensed to provide care for adults;
- (3) Prohibit the respondent from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly;
- (4) Subject to the limitations otherwise stated in the Act, grant any other relief deemed necessary by the court to protect an adult.

Violation of the order subjects the respondent to immediate arrest by a law enforcement officer.

The Act became effective May 10, 2010.

PUBLIC CHAPTER 1084 – (House Bill 2284 by Ferguson/ Senate Bill 2294 by Kyle)

This bill amends Titles 33, 63, and 68 of the Tennessee Code Annotated.

Section 1 – Amends Title 63, Chapter 1, by adding a new section 149, which requires health care professionals, such as doctors, to obtain a registry and background check when employing or contracting with individuals providing direct patient care.

Section 2 – Amends Title 68, Chapter 11, by adding a new section 271, which requires health care facilities, such as hospitals, to obtain a registry and background check when employing or contracting with individuals providing direct patient care.

Section 3 – Adds a new subsection (e) to TCA 33-2-1202 which requires organizations contracting with Department of Intellectual Disabilities Services (DIDS) to conduct a background check of anyone providing direct care to a service recipient.

Section 4 – Amends TCA 33-2-1202(c) with respect to background checks by organizations contracting with Department of Intellectual Disabilities Services (DIDS) for direct care to a service recipient.

Section 5 – The bill will become effective on October 1, 2010.

CHILD CARE

PUBLIC CHAPTER 750 (Senate Bill 2988 by Barnes/House Bill 3263 by Johnson)

This Act amends Tennessee Code Annotated Title 40, Chapter 39, Part 2, relative to registered sex offenders.

Under the current law, registered sex offenders are prohibited from being in any of the following locations when children under the age of eighteen (18) are present:

- (1) Any building or grounds of any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public;
- (2) Within 1,000 feet of the property line of any building owned or operated by any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public; or
- (3) Being in any conveyance owned, leased or contracted by a school, licensed day care center, other child care facility or recreation center to transport students to or from school, day care, child care, or a recreation center or any related activity thereof.

A registered sex offender is allowed to be in the above locations if the person is:

- (A) A student in attendance at the school;
- (B) Attending a conference or other scheduled event with school, day care, child care, park, playground or recreation center officials as a parent or legal guardian of a child who is enrolled and participating in the conference or other scheduled event;
- (C) Resides at a state licensed or certified facility for incarceration, health or convalescent care; or
- (D) Dropping off or picking up a child/children and the person is the child/children's parent or legal guardian.

A registered sex offender who violates the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act commits a Class E felony. A first violation is punishable by at least 90 days imprisonment and a fine of up to \$350; a second violation is punishable by at least 180

days imprisonment and a fine of up to \$600; a third or any subsequent violations are punishable by at least a year imprisonment and a fine of up to \$1,100.

Section 1: T.C.A. § 40-39-211(d) is amended by replacing subdivision (2). It clarifies in subdivision (2)(B) that a registered sex offender may attend any conference at a school, day care, child care, park, or recreation center as a parent or legal guardian as long as his/her child is enrolled there. It also allows a registered sex offender to attend an event at a park, playground or recreation center where his/her child is participating in the event. The registered sex offender is required to have received written permission or a request from the school principal or facility administrator before attending such conference/event.

This Act also requires in subdivision (2)(D) that a registered sex offender who drops off or picks up his/her child provide written notice of the offender's status to the school principal or school administrator upon the child's enrollment

Section 2: T.C.A. § 40-39-211(g) is amended by adding a new subdivision (4). It specifies that a registered sex offender who violates the law by not obtaining the written permission required under subdivision (d)(2) will be punished by a fine only.

Section 3: The Act became effective on July 1, 2010.

PUBLIC CHAPTER 789 (Senate Bill 3867 by Kyle/ House Bill 3826 by Cooper)

This Act amends the child care licensing law at T.C.A. § 71-3-502(j)(6) to delete the requirements for annual reports by child care agencies licensed by the Department of Human Services that receive \$75,000 or more in child care certificate payments annually from the Department of Human Services. This requirement was to allow the Department and the Comptroller to determine if the funds were being used effectively to provide child care. Certain benchmarks were established by the statute to be used to evaluate the appropriate use of the funds. It mandated Comptroller audits for those receiving over \$250,000.

The bill now eliminates the mandatory review of child care agencies receiving child care certificates by the Department and mandatory audit of certain child care agencies by the Comptroller, and instead, leaves it to their discretion to conduct audits to verify the proper use of the child care certificate funds by the child care agencies.

The Act further modifies T.C.A. § 71-3-502(j)(8) which makes the provision of false information required by the financial evaluation program in subsection (j)(6) a basis for denial or revocation of the child care agency's license and the imposition of a civil penalty of \$500.00. The Act deletes the provision of false information specifically targeted at the annual reports described above that are now eliminated by the Act, and, instead, broadens the falsification penalty to cover the provision of false information for any part of the licensing law, any other provisions of Title 71 or for information used to enforce child care subsidy requirements. This enables the Department to deny or revoke a child care agency's license or impose a civil penalty for providing, for example, false information regarding attendance of children who would qualify for child care subsidy payments, or qualifications of staff or the financial or insurance coverage status of the child care agency.

The Act became effective on April 19, 2010.

PUBLIC CHAPTER 964 (House Bill 3196 by Faulkner /Senate Bill 3169 by Burchett)

This Act amends Tennessee Code Annotated Title 38, Chapter 6, Part 1, and Title 40, Chapter 35, Part 3 relative to adults and juveniles who commit specified sexual offenses.

Under the current law, an adult who is convicted of, or a juvenile who is found delinquent, for committing (or either for attempting to commit) any of the following offenses is required to provide a biological specimen for DNA analysis:

1. rape
2. aggravated rape
3. sexual battery
4. aggravated sexual battery
5. rape of a child
6. incest

The Tennessee Bureau of Investigation is required to have a centralized system to cross-reference data obtained from DNA analysis and to include profiles from convicted felons, forensic unknowns, criminal suspect, and missing persons.

Section 1: T.C.A. § 38-6-113(c) is amended by adding the profiles of violent juvenile sexual offenders to the TBI centralized system used for the cross-reference of data obtained from DNA analysis. A violent juvenile sexual offender is defined as any person who is adjudicated delinquent for any act that would constitute one of the above-listed offenses if committed by an adult.

Section 2: T.C.A. § 40-35-321(b) is amended by including the offense of aggravated rape of a child to the list of sexual offenses that require the collection of a DNA sample from either an adult who is convicted of the offense or from a juvenile who is adjudicated delinquent for the offense.

Section 3: The Act became effective July 1, 2010.

PUBLIC CHAPTER 1132 (Senate Bill 3804 by Marrero/House Bill 3947 by Kernell)

This Act amends Tennessee Code Annotated Title 71, Chapter 3, Part 5, relative to child care providers.

Under the current law, each child care agency licensed by the Department of Human Services receives an annual report card following an evaluation of the agency based on key indicators of performance and a program assessment score. In addition, child care agencies may volunteer to participate in a child care quality rating system that is also based on the key indicators of performance and a program assessment score, with a resulting one, two or three star rating that demonstrates how the agency exceeds basic licensing standards.

The key indicators include:

- Health and safety;
- Training, education, certification, and credentials of all supervisory staff;
- Staffing ratios; and
- Child development and enrichment.

Department rules (Tenn. Comp. R. & Regs. 1240-4-7-.03(3)) expand the key indicators into component areas that measure the key indicators of performance. The component areas are:

- Director qualifications;
- Professional development;
- Parent/family involvement;
- Ratio and group size;
- Staff compensation; and
- Program assessment.

A twelve-member advisory council composed of child care agency representatives meets once a year to review any changes proposed by the Department to the report card process or the child care quality rating system.

Section 1: T.C.A. § 71-3-502(j)(2) is amended by adding a new subdivision (F). The Act urges the advisory council to review the key indicators of performance to determine if any of the questions used in the report card process and child care quality rating system regarding the key indicators should be revised.

Section 2: The Act became effective upon becoming law on June 29, 2010.

CHILD SUPPORT

PUBLIC CHAPTER 888 (Senate Bill 3001 by Barnes / House Bill 3423 by Litz)

This Act amends TCA §36-1-102 dealing with adoption.

Section 1: Tennessee Code Annotated, Section 36-1-102(28), is amended by adding a new subdivision (F). The new subdivision provides that a man is not the legal father of a child based solely on blood, genetic or DNA testing without either a court order or voluntary acknowledgment of paternity. Such a test may be used as a basis for a court order establishing paternity by a court of competent jurisdiction pursuant to TCA 24-1-112. The new section makes it clear parentage is not established based on the test result standing alone.

Section 2: The Act became effective on May 10, 2010.

PUBLIC CHAPTER 901 (Senate Bill 2818 by Faulk /House Bill 3647 by Stewart)

This bill revises the Uniform Interstate Family Support Act (“UIFSA”) contained in Tennessee Code Annotated, Title 36 (Domestic Relations), Chapter 5 (Alimony and Child Support), Parts 20-29. It deletes the current TN UIFSA in its entirety and replaces it with a 2008 updated version of the UIFSA drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The current TN UIFSA establishes uniform procedures for the interstate enforcement of family support orders (both child support and spousal support) by:

1. setting basic jurisdictional standards for state courts;
2. determining the basis for a state to exercise continuing exclusive jurisdiction (“CEJ”) over a support proceeding;
3. establishing rules for determining which order is the controlling order when support has been ordered in multiple states; and
4. providing rules for modifying or refusing to modify another state’s support order

Under the current TN UIFSA, recognition and enforcement of child support orders involving a foreign jurisdiction is by agreement with the U.S. on a jurisdiction by jurisdiction basis.

Section 1: Deletes and replaces the existing Parts 20-29 of Tenn. Code Ann. Title 36, Chapter 5 with the updated UIFSA.

The primary effect of the updated UIFSA is that it will now apply to enforcement actions between states and between countries that have ratified the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (“Convention”). The Convention establishes uniform procedures for the international enforcement of family support orders. The Convention is currently nearing completion of the advice and consent process in the U.S. Senate. Once it is ratified, there will be legislation introduced into the United States House of Representatives and United States Senate. The federal legislation will require every state to enact the 2008 UIFSA revisions within two years. States that fail to do so will lose federal funds for state child support programs.

Under the updated UIFSA, a foreign country participating in the Convention must have procedures for establishing, modifying and enforcing family support orders that are substantially similar to UIFSA’s procedures for U.S. residents. The foreign country must have procedures to allow U.S. residents to establish paternity and establish and enforce family support orders at no cost to the U.S. residents. The foreign country must designate a central government authority, as the Department of Human Services has been designated in Tennessee, to administer the establishment, modification and enforcement procedures.

The updated UIFSA requires TN to recognize a foreign country as equivalent to another U.S. state for the purpose of UIFSA. Residents of foreign jurisdictions will have the same access to TN IV-D child support services at no cost to the resident, including establishing paternity and establishment, modification and enforcement of family support orders.

Many of the sections of the current TN UIFSA are retained, with small changes that do not affect the substance, other than adding foreign countries. The following are the more sweeping or substantive changes:

- (1) Tenn. Code Ann. § 36-5-2201 adds a restriction: personal jurisdiction arising under paragraph (a) [the provision in current TN UIFSA] cannot be used to acquire personal jurisdiction for modifying a support order of another state unless the provisions of §§ 36-5-2611 or 36-5-2615 are met.
- (2) Under Tenn. Code Ann. § 36-5-2205, continuing exclusive jurisdiction to modify a support order is placed with the court having continuing exclusive jurisdiction, until the order is not the controlling order or until all of the parties file consent in the record that another court has personal jurisdiction over a party that is an individual or is located in the state of residence of the child and may modify the support order. If a court of another state has issued a support order under UIFSA, a court of this state shall recognize the continuing exclusive jurisdiction of the other state. A court that lacks continuing exclusive jurisdiction may act as an initiating court to request another state modify the support order issued in that state.
- (3) If two or more support orders have issued with regard to the same obligor and the same child, a court with personal jurisdiction over both obligee and obligor may determine the controlling order upon request. The request must be accompanied by a copy of every child support order in effect and the applicable record of payments.
- (4) A Tennessee court that determines a controlling order or issues a new controlling order shall state in the order: the basis of the determination, the amount of prospective support (if any) and the total amount of arrears and interest after credit for payments. Within thirty (30) days, a copy of the order must be sent to each court that issued a previous child support order. Failure to file does not affect enforceability. Such an order must be recognized under parts 20-29 of Title 36 (Domestic Relations), Chapter 5 (Alimony and Child Support).
- (5) A Tennessee court with personal jurisdiction over a nonresident in a proceeding under parts 20-29 of this chapter, under other law of this state or under a foreign support order relating to a support order, may receive evidence from outside this state pursuant to § 36-5-2316, communicate with a tribunal outside this state pursuant to § 36-5-2317, and obtain discovery through a tribunal outside this state pursuant to § 36-5-2318. In all other respects, parts 23-26 do not apply, and the court shall apply the procedural and substantive law of Tennessee.
- (6) A Tennessee court issuing a spousal-support order consistent with the law of this state has continuing exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation, however the court may not modify a spousal-support order issued by a court of another state or a foreign country having continuing exclusive jurisdiction over that order under the law of that state or foreign country. The court may serve an initiating or responding court to enforce the order, or to modify its own order.
- (7) A support enforcement agency of this state that requests registration and enforcement of a support order stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.
- (8) A party seeking to enforce a foreign order not under the Convention may register the order under UIFSA. The Department of Human Services is designated as the central authority to perform specific

functions under the Convention. The procedures and authority for enforcing and modifying orders involving a foreign country are substantially similar to those existing under the current version of UIFSA.

(9) A petitioner filing a direct request involving a foreign support order is not entitled to assistance from the Department of Human Services.

(10) If a court does not recognize and enforce a Convention order in its entirety, it is required to enforce any severable part of the order. A court is limited in its ability to modify a Convention order when the obligee remains a resident of the foreign jurisdiction unless the obligee submits to the local jurisdiction or the foreign jurisdiction lacks or refuses to exercise jurisdiction to modify the order or issue a new support order.

(11) Convention orders must be in the original language, and if not in English, be accompanied by an English translation.

(12) The time for sending copies of notices or communications to the petitioner is shortened to two (2) days from receipt. The current time requirement is within five (5) days.

(13) The revised UIFSA does not require a verified petition or certified copies of orders.

(14) This updated UIFSA retain the requirement that TN must have personal jurisdiction over a noncustodial parent in order to enforce a family support order. UIFSA does not provide an exclusive method of establishing or enforcing a family support order in Tennessee. UIFSA does not govern child custody or visitation procedures or orders.

Section 2: The new law was signed by the Governor on May 22, 2010, and becomes effective after the occurrence of future events. Once the “instrument of ratification” of the Convention is deposited, DHS will file a notice with the Secretary of State, to be published on the Administrative Register on the Secretary of State’s website, and 6 months later, the law goes into effect.

PUBLIC CHAPTER 915 (Senate Bill 2341 by Overbey /House Bill 2372 by Montgomery)

This Act amends TCA 36-1-111, relative to adopted children.

Section 1: T.C.A. § 36-1-111(r)(1)(A) is amended by designating the existing subdivision as 36-1-111(r)(1)(A)(i) and adding new language to be designated subdivision 36-1-111(r)(1)(A)(ii), which applies only to children accepted by the Department of Children Services for surrender who were previously placed for adoption by the Department. In such cases, the unrevoked surrender by the child’s adoptive parents’ to, and acceptance of surrender by, DCS of the previously adopted child terminates the responsibilities of the adoptive parent for future child support or other future financial responsibilities. This does not terminate the responsibilities of the adoptive parents for past child support arrearages or other obligations incurred prior to the surrender. The court may, with the consent of the parent, restore the rights and responsibilities pursuant to § 36-1-118(d).

Section 2: The Act became effective July 1, 2010.

PUBLIC CHAPTER 924 (Senate Bill 3002 by Berke /House Bill 3427 by Hackworth)

This Act amends T.C.A. § 36-1-102, regarding adoptions.

Section 1: T.C.A. § 36-1-102(1) is amended by adding a new subdivision (H), which states every parent who is 18 years of age or older is presumed to have knowledge of his/her legal obligation to support his/her child(ren).

Section 2: The Act became effective May 26, 2010.

PUBLIC CHAPTER 1085 (Senate Bill 2472 by Watson, Johnson / House Bill 2454 by Lynn)

This Act approves all permanent state agency rules filed after January 1, 2009 which are in effect and scheduled for expiration on June 30, 2010 and stays the expiration date until repealed or amended by subsequent rule or force of law.

Child Support Services Division, Rule 1240-2-5-.13(3)(a)(1) was deleted from the Act and, so, it expires on June 30, 2010. This section of the Rule addressed the issues available for administrative review. The deleted sentence says that one of the issues for review is “Whether there is a mistake as to the identity of the persons or entities to whom the administrative action has been directed,” This issue for review is contained in TCA 36-5-1002(a).

The Act became effective on June 23, 2010 and the rule expired on that date. However, the expiration of the single line of this Rule does not affect the effective operation of the Rule since the same language of the deleted line remains in the existing statute at T.C.A. §36-5-1002(a) and the statute was not amended.

COMMUNITY SERVICES

PUBLIC CHAPTER 626 (Senate Bill 3870 by Kyle/ House Bill 3804 by Winningham)

This Act eliminates the existing income limit for persons eligible for energy assistance (Low Income Heating and Energy Assistance) currently set by Department regulation at 125% of poverty, and, regardless of what the existing regulation or other provisions of state law require, allows the Department to set the poverty level at the maximum allowed by federal law so that eligibility can be expanded for all persons who would be eligible for LIHEAP under federal law.

The Act became effective March 3, 2010.

CIVIL RIGHTS COMPLIANCE

PUBLIC CHAPTER 765 (Senate Bill 3408 by Harper/House Bill 3521 by J. DeBerry)

The Act requires each state governmental entity subject to the requirements of Title VI of the federal Civil Rights Act to submit annual Title VI compliance reports and implementation plan updates to "the human rights commission" instead of "the department of audit."

The Act became effective April 14, 2010.

CONFIDENTIALITY

PUBLIC CHAPTER 862 (House Bill 2651 by K. Brooks/Senate Bill 2563 by Bunch)

The Act shall be known and may be cited as the "Colby Stansberry Act." This act requires health care providers to implement a policy to protect the dignity of a patient by limiting the use and disclosure of medical records, images, videos or pictures intended to be used for appropriate medical educational purposes. The policy must be in effect even if the patient dies or becomes incapacitated.

The policy must include when and to whom it is appropriate to use and disclose the patient's information, and when a written authorization from the patient or his or her authorized representative is required prior to use or disclosure. If the patient becomes incapacitated or dies, and there is no legal representative for the patient, the patient's next of kin will be considered to be an authorized representative for the patient.

When required, the written authorization will include the core elements required by federal regulations on "Standards for Privacy of Individually Identifiable Health Information."

This act adds the following definitions:

- () "Incapacitated" means that a patient is in a physical or mental condition such that the patient is incapable of granting or denying informed consent;
- () "De-identified" means there is no reasonable basis to believe that the information can be used to identify an individual and there is compliance with the requirements for de-identification outlined in 45 CFR Part 164, §164.514 involving "Other requirements relating to uses and disclosures of protected health information".

This Act became effective on April 30, 2010.

DISABILITY DETERMINATION/VOCATIONAL REHABILITATION

PUBLIC CHAPTER 674 (Senate Bill 2439 by Watson / House Bill 2473 by Lynn)

This Act extends the termination date of the Advisory Board for Rehabilitation Centers in Tennessee Code Annotated § 4-29-237(a) until June 30, 2016 instead of June 30, 2010, and continues an existing entity at its current funding level.

The Act became effective on March 31, 2010.

PUBLIC CHAPTER 734 (Senate Bill 3338 by Henry / House Bill 3139 by Brooks)

This Act changes “mental retardation” and “mentally retarded” references within Tennessee Code Annotated Titles 33, 39, and 41 to “intellectual disabilities” and “intellectual disability.” The terms “mental retardation” and “mentally retarded” are increasingly considered to be derogatory or hurtful, and as a result there has been a movement toward utilizing different terminology. State governments have been urged to assist in removing the stereotype by utilizing the term “intellectual disability” as a substitution for the term “mental retardation” and other similarly related terms.

The current eligibility standards, practices, and procedures of state and local agencies and departments do not change with the new language. Any cost shall be accommodated within existing resources without an increased appropriation or reduced reversion.

The Act became effective April 9, 2010.

PUBLIC CHAPTER 865 (Senate Bill 2959 by Watson/House Bill 3049 by Favors)

This Act amends Tennessee Code Annotated, Title 63, Chapter 2, Part 1 relative to charges for copying and certifying medical records.

Section 1: The Act amends T.C.A. § 63-2-102 concerning medical records by replacing the current subsection (a) with a new (a), by inserting new subsections (b) and (c), and by redesignating the existing (b) and (c) as appropriately numbered subsections. The existing (b) and (c) provide that nothing in Title 63, Chapter 2 shall be construed as superseding any provision of law that establishes specific costs for the:

- reproduction, copying or mailing of records;
- that payment of the costs may be required by the provider prior to furnishing the requested records;
- and that upon payment of the costs, the patient or patient’s authorized representative shall have the right to receive the medical records without delay.

At T.C.A. § 63-2-102(a), a provision is retained that the party requesting the patient’s records is responsible to the provider for the reasonable costs of copying and mailing patient’s records. As amended, subsection (a) provides that, for, other than records involving workers’ compensation cases, reasonable costs to copy and mail patient’s records, shall not exceed twenty dollars (\$20.00) for medical records five (5) pages or less in length and fifty cents (50¢) for each page after the first five (5) pages and the actual cost of mailing. The prior subsection (a) provided reasonable costs shall not exceed twenty dollars (\$20.00) for forty (40) pages or less and twenty-five (25¢) per page after the first forty (40).

Subsection (a), as amended, adds a new provision that a health care provider shall not charge a fee for copying or notarizing a medical record when the Department of Health makes the request pursuant to a complaint, investigation or survey relative to that department's responsibility for oversight of the health care system as set forth in § 63-1-117.

At T.C.A. § 63-2-102, subsection (b), as amended, provides that the increases in charges for copying and certifying medical records in the amended subsection (a) shall not apply to requests for medical records made by the Department of Human Services. As well, subsection (b) provides that the charges for copying and certifying medical records requests made by the Department of Human Services shall remain as existed January 1, 2010 in the prior subsection (a).

At T.C.A. § 63-2-102(c), if requested, the provider shall submit a notarized affidavit by the custodian of records, certifying that the records are true and correct copies of records in the custody of the affiant; were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of and a business duty to record or transmit those matters; were kept in the course of regularly conducted activity; and were made by the regularly conducted activity as a regular practice.

Subsection (c) provides that in addition to the charge for the copies of the record, the provider may charge up to twenty dollars (\$20.00) for the affidavit; and the records submitted with the affidavit shall qualify for the business records exception to the hearsay rule.

Section 2: The Act became effective on July 1, 2010.

PUBLIC CHAPTER 1100 (House Bill 3625 by Maddox / Senate Bill 3341 by McNally)

This Act creates a stand-alone "department of intellectual and developmental disabilities" and changes various provisions throughout the Tennessee Code Annotated to correspond with the responsibilities and name changes of the Division of Intellectual and Development Disabilities Services and the Department of Mental Health and Developmental Disabilities. It divides the Department of Mental Health and Developmental Disabilities (MHDD) into separate cabinet level departments of the Department of Mental Health and the Department of Intellectual and Developmental Disabilities. The Department of Mental Health would perform all functions of the Department of Mental Health and Developmental Disabilities under present law, including all licensing functions. The Department of Intellectual and Developmental Disabilities would perform all functions of the existing Division of Intellectual and Developmental Services under present law. It also establishes a transition team within DIDS to facilitate the transition of DIDS into the Department of Intellectual and Development Disabilities.

It specifies that the actions to improve and coordinate services for behavioral/emotionally disordered children would be taken by the Departments of Education, Mental Health, and Intellectual and Developmental Disabilities. This bill also changes the references to "mental retardation" to "intellectual and developmental disabilities."

It requires that each report of known or suspected child sexual abuse or abuse of an adult involving a sexual offense at a hospital or a facility licensed by the department of intellectual and developmental disabilities be made to the local law enforcement agency in the jurisdiction where such offense occurred.

This Act states that there would be two (2) separate Statewide Policy and Planning Councils, one for the Department of Mental Health and another for the Department of Intellectual and Developmental Disabilities. The commissioner of Mental Health would appoint as members five (5) representatives of mental health, one representative of elderly services, and at least one at-large representative. Similarly, the commissioner of Intellectual and Developmental Disabilities would appoint as members five (5) representatives of intellectual and developmental disabilities, one representative of elderly services, and at least one at-large representative.

The Act also specifies that the current Council on Children's Mental Health Care must be co-chaired by the executive director of the commission and the commissioner of Mental Health and two (2) persons appointed from the Department of Mental Health by the commissioner of Mental Health. This bill adds that the commissioner of Intellectual and Developmental Disabilities must be a member of the council.

It revises the membership of the Traumatic Brain Injury Advisory Committee to require that one member knowledgeable on TBI must represent the Departments of Mental Health and Intellectual and Developmental Disabilities and that the member must be selected from up to two nominees from the Department of Mental Health and up to two nominees from the Department of Intellectual and Developmental Disabilities.

This Act specifies that the membership of the Council for the Deaf and Hard of Hearing, the board of directors of the insurance pool operated by Access Tennessee, the Tennessee Health Information Committee; and the Statewide Advisory Board for Rehabilitation Training Centers for the developmentally disabled and other persons with disabilities would include both the commissioner of Mental Health and the commissioner of Intellectual and Developmental Disabilities.

This Act requires the comptroller to study the licensing of mental health and developmental disability facilities within the state. As part of the study, the comptroller must examine the licensing structure within the Department of Mental Health and assess the feasibility of dividing such licensing functions between the Department of Mental Health for the purposes of mental health facilities and the Department of Intellectual and Developmental Disabilities for the purposes of developmental disability facilities. The comptroller would report any findings and recommendations to the transition team, the prime sponsors of the bill, to the chair of the General Welfare, Health and Human Resources committee of the Senate and to the chair of the Health and Human Resources committee of the House of Representatives by October 29, 2010.

The Act also revises the sunset date of the Department of Intellectual and Developmental Disabilities to June 30, 2012, and the Department of Mental Health to June 30, 2013.

This Act would take effect upon becoming a law for the provisions concerning the transition team and the requirement that the comptroller study the licensing of mental health and developmental disability facilities and that the affected agencies minimize expenses due to the creation of the Department of Intellectual and Developmental Disabilities, and January 15, 2011, for all other provisions of the bill, as amended.

FAMILIES FIRST

PUBLIC CHAPTER 1056 (Senate Bill 2768 by Ford/House Bill 2644 by Cooper)

This Act amends Tennessee Code Annotated, Title 71, Chapter 3, Part 1 relative to personal responsibility plans.

Section 1: The Act amends T.C.A. § 71-3-154 to add language at subdivision (h)(2)(A). T.C.A. § 71-3-154(h)(2)(A) currently provides for the personal responsibility plan to require participation in personal responsibility activities as set forth in subsection (g) of § 71-3-154. The language to be added at the end of subdivision (h)(2)(A) states that the Department of Human Services may provide either a parent education training class for parents or caretakers of children in pre-Kindergarten through third grade or a program of volunteer service in school, in which a parent or caretaker relative who is a recipient of temporary assistance under § 71-3-154 may agree to participate.

Section 2: The Act became effective on July 1, 2010.

FISCAL

PUBLIC CHAPTER 1091 – House Bill 2822 by Cobb/ Senate Bill 2839 by Stewart)

Section 1 – The Act requires the Commissioner of Finance and Administration to promulgate regulations authorizing a preference in the evaluation of proposals for state contracts requiring the performance of call center services for vendors through whom such services will be solely provided by citizens of the United States who reside in the United States, or any person authorized to work in the United States pursuant to federal law, including legal resident aliens in the United States. Any proposer seeking this preference must supply such supporting documentation as the state may require and must certify that it will provide services solely by citizens of the United States who reside within the United States, or persons authorized to work in the United States pursuant to federal law, including legal resident aliens in the United States. The certification must acknowledge that the state will audit and monitor compliance and seek appropriate remedies for noncompliance.

Sections 2 & 3 – Pertain to the National Flood Insurance Program. requires all counties and municipalities that have an effective flood insurance rate map or flood hazard boundary map published by FEMA that identifies a special flood hazard area within the political boundaries of the county or municipality, in cooperation with the department of economic and community development, to meet the requirements for participation in the national flood insurance program, administered by FEMA, by June 30, 2012.

Section 4 – The Act became effective June 23, 2010.

PUBLIC CHAPTER 1098 (House 3353 Curtiss/ Senate Bill 3598 Ketron)

The Act establishes the newly created State Procurement Commission. The commission consists of multiple boards and offices.

Section 1: Creates a state procurement commission comprised of three voting members (Comptroller, Commissioner of General Services, Commissioner of Finance and Administration) and the chief procurement officer serving as a non-voting member. Additionally, the attorney general and reporter shall serve as legal counsel for the commission.

All Departments must submit any rules related to procurement to the commission for commission approval and comment prior to submission to the Attorney General's office. The Commission has the power to review and comment on proposed rules, regulations, policies, standards and procedures, and to make recommendations for changes governing the rules relating to procurement of goods and services.

A State Protest Committee is created to handle any protests that result from the award of any contracts. The Commission shall not exercise authority over the award of a specific contract or grant.

Procurement Office

The Act also creates a procurement office headed by the chief procurement officer. This person will be appointed by the Governor after consultation with the Comptroller and will serve as a full-time public official at the will and pleasure of the Governor. The governor must appoint the Chief Procurement Officer by March 31, 2011. The appointed individual must be qualified by training and relevant recent experience with procurement of goods and services, establishment of contracts, contract oversight, providing training and contract administration and demonstrated executive and organizational ability to perform duties of the office. Additionally, the individual must also have recent experience relating to program administration of enhanced opportunities for small and minority-owned businesses.

Necessary personnel in the Department of General Services and the Department of Finance and Administration involved in the procurement of goods and services will be transferred to the procurement office.

- All contracts and contract rights including renewals will be preserved and transferred to the procurement office

- Any bidding or negotiations that are incomplete will be transferred to the procurement office
- All documents, records, books, papers, etc with respect to procurement office duties will be transferred from the Departments of General Services and Finance and Administration to the procurement office
- All rules, regulations, orders, and decisions promulgated by the Departments of General Services and Finance and Administration shall remain in effect. The Procurement Commission does however have the authority to rescind all aforementioned items and adopt new orders, rules, regulations, and decisions.

The Chief Procurement Officer has the following powers and duties:

- Establish a single public internet procurement site by July 1, 2011 which includes how to do business with the state, registration for bidders, posting of all procurements
- Develop a transition plan that provides for the implementation by date and action to consolidate the procurement of contracting for goods, services, and grants; disposal of all goods by the state which includes employee job classifications for the state procurement office and agency procurement functions
- Develop and propose to the general assembly any changes required to consolidate statutes and develop proposed rules, regulations policies and standards that will:
 1. establish a central procurement process;
 2. establish a central grant management process;
 3. establish a central performance and quality assurance process;
 4. establish a central bidder relations management process,
 5. establish a central process for disposal of goods;
 6. conduct training for the state procurement office;
 7. prescribe professional accountability standards;
 8. conduct and participate in procurement education training programs; and
 9. conduct research into existing and new methods of procurement.

The Advisory Council on State Procurement

The Act also creates an advisory council on state procurement. The council will meet at least twice a year to discuss problems and recommendations for the improvement of the procurement process. The council will also review and issue a formal comment regarding procurement policies, standards, guidelines and procedures established by the chief procurement officer prior to being presented for approval by the commission. The Council's role will be strictly advisory but it is allowed to do the following:

1. make recommendations to the governor, general assembly, fiscal review committee, commissioner of general services, comptroller, and commissioner of finance and administration relating to the enactment of rules that affect title 12, chapters 3 and 4;
2. make recommendations regarding statistical data collection;

3. monitor performance of the chief procurement office in the implantation of legislative directives; and
4. review legislation relating to procurement and contract law.

The Comptroller

The Comptroller is authorized to examine and approve all procurements, contracts, grants and other documents that serve to incur financial obligations against state government.

Single Service Contracts (Non-Competitive Contracts)

All requests of the procuring agency to procure goods or services by negotiation with a single service provider (non-competitive contracts) must be filed with the fiscal review committee of the general assembly, Comptroller, and Chief Procurement officer and must document the following:

1. Description of the goods and services to be acquired
2. Explanation of the need for or requirement to acquire the goods and services
3. Name and address of the proposed contractor's principal owner
4. Evidence that the proposed contractor has experience providing similar goods and services and evidence of the length of time said contractor has provided such goods and services
5. Explanation of whether goods or services were purchased by the procuring agency in the past
6. Description of the procuring agency's efforts to use existing state employees and resources
7. Justification of why goods or services should be acquired through non-competitive negotiation
8. Any additional information that the fiscal review committee may direct the procuring agency to provide

Contracts and Contract Amendments Reviewable by Fiscal Review Committee

- Proposed non-competitive contracts or contract amendments with a term of one year which are renewable by either party and have a cumulative value of not less than \$250,000
- Any contract amendment that increases or decreases the funding and extends or shortens the contract term
- Any contract amendment that changes the entity or name of the entity with which the state is contracting
- Any contract amendment that changes an original or amended contract in a substantive manner

Agencies must initiate a consultation with fiscal review committee staff prior to proceeding with amendment for review by appropriate state authorities. The Fiscal Review Committee has twenty business days from receipt of request as provided for comment on the proposed contract. The Comptroller may waive the twenty day period for comment and authorize the chief procurement officer to execute the contracts or amendments that are determined to be in the best interest of the state and proceed with reporting and comment by the committee at their next scheduled meeting.

Employee Benefits

No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided by law. It is an offense for a public employee or former public employee having an official responsibility for procurement transactions to accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt with in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body prior to the commencement of employment with that bidder, offeror or contractor.

It is an offense for any person who for compensation prepares an invitation to bid or request for proposal for or on behalf of a public body to:

- Submit a bid or proposal for that procurement or any portion thereof
- Disclose to any bidder information concerning the procurement that is not available to the public
- Demand to receive any contracting or subcontracting work from the procurement or to demand any payment for the award of a contract or subcontract

Any violations of the aforementioned requirements are classified as a Class A misdemeanors.

Section 2: Changes all code references from the board of standards to the procurement commission except in §12-3-214 where the board of standards shall be changed to the protest committee. All references to the commissioner of general services in Title 12, Chapter 3 shall be changed to the chief procurement officer.

Section 3: Throughout Title 12, Chapter 4, all references to the review committee shall be changes to the protest committee. All references to the commissioner of finance and administration in the same chapter and title shall be changed to the chief procurement officer.

Section 4: Directs the code commission to reclassify and transfer current language in §12-4-109(a)(1)(g) through (j) to §4-56-106 effective October 1, 2011

Section 5: Re-designates §4-29-233 involving sunset dates by adding the state procurement commission, state protest committee, and advisory council on state procurement.

Section 6: The Act shall become effective October 1, 2011.

PUBLIC CHAPTER 1113 (House Bill 3169 by Curtiss/ Senate Bill 3135 by McNally)

The Act generally provides a mechanism for state agencies to which a person or entity owes a debt to collect that debt by an offset from state tax refunds that may be payable to a taxpayer by the state.

Section 4 of the Act permits the disclosure of state tax information by the Department of Revenue to state agencies who are “claimants” under new section 67-1-1808.

A claimant under Section 7 of the Act means any state agency to which a taxpayer owes any debt or that acts on behalf of any person to collect the debt. This would include the Department of Human Services when acting to collect any overpayments of benefits or when acting to collect child support.

“Debt” under Section 7 is defined to include money, unpaid accounts, or a sum due and owing any claimant by a taxpayer, which would include overpayments and child support owed to the Department of Human Services.

The Act provides that any taxpayer seeking refunds of \$200.00 or more to complete a form under oath detailing any debts, including child support or other debts, such as benefit overpayments, which they owe. The tax refund that is owed will be used to offset the debt owed by the taxpayer.

The Act sets out priorities in Section 7(e) for payments if there are multiple claimants. Child support is second only to state tax liabilities, followed by judgments and liens in favor of the claimant in the order entered or perfected, and then all other debts in the order in which the debt is incurred.

The Act requires the Commissioner of Revenue to notify the Treasurer and the claimant of the debts listed by the taxpayer, and the Treasurer is required to check the unclaimed property fund to determine if the taxpayer is listed among those to who has unclaimed property. The debt shall be offset using the unclaimed property to which the taxpayer is entitled.

Upon receipt of the notice, the claimant must notify the debtor and the Commissioner of Revenue of its intent to offset the debt using the tax refund and must provide information regarding the basis for the debt and contact information for the taxpayer to reach the claimant and the right to appeal within 20 days of receipt of the notice to the Department of Revenue to determine if the debt still exists if the debt has already been the subject of a determination by a final judgment of an administrative hearing under the Uniform Administrative Procedures Act (UAPA) or by a court.

However, if the debt has not been adjudicated by a UAPA hearing or court, the taxpayer must file for a UAPA appeal with the claimant within 20 days of the receipt of the notice. The claimant must notify the Department of Revenue if the taxpayer timely files for appeal. The hearing will determine the correctness of the debt or if an adjustment to the debt is necessary. A copy of the final order must be sent by the claimant to the Commissioner of Revenue who may collect a fee up to \$5.00 from the claimant to reimburse the Department for collection costs.

The Act also requires in Section 7(i) that the Department of Revenue submit to the Department of Human Services, and other claimants, on an annual basis, a list of taxpayers for the previous year who filed claims for tax refunds of \$200.00 or more and for which no debts were reported. If the claimant has information showing that a named taxpayer owes a debt to the claimant, it must notify the Department of Revenue. The Department of Revenue is then required to make an assessment against the taxpayer to recover the amount of the debt that would otherwise have been offset by the tax refund. The same appeal and hearing processes as described above apply to this assessment. The Act specifically states that this required notification process or any other provisions of Section 7 does not require a state agency's employees to violate any state or federal confidentiality regulations.

All exchanges of taxpayer information between the Department of Revenue, the Treasury and the claimant necessary to carry out Section 7 are declared lawful.

Section 8 permits, but does not require, the claimant agency to promulgate rules to carry out the provisions of the Act concerning internal procedures for reporting debts and conducting administrative hearings.

The Act became effective upon becoming law on June 28, 2010 and applies to any claims for a refund filed with the Department of Revenue on or after July 1, 2009 that has not finally been determined.

OFFICE OF THE GENERAL COUNSEL

PUBLIC CHAPTER 618 (Senate Bill 2613 by McNally/House Bill 2576 by Turner)

Section 1 – The Act clarifies that clarifies that privileged communication between critical incident stress management team members and persons participating in crisis intervention does not apply if the communication indicates the existence of present child abuse or neglect of the individual, abuse of an adult, or family violence.

This legislation appears to be correcting a drafting error that omitted the word “present” from the statute.

Section 2 – The Act became effective on March 2, 2010, and applicable to any crisis intervention testimonial privilege asserted on or after that date.

PUBLIC CHAPTER 1070 (House Bill 3351 by Curtiss/ Senate Bill 3549 by Ketron)

Section 1 of the Act amends T.C.A. § 4-5-220 and requires the Secretary of State, in addition to current requirements relative to publication of information on pending rules filed by state agencies, to publish a table of all pending rules with the projected financial impact of those rules on local governments.

Section 2 adds a new section to the rulemaking requirements of the Uniform Administrative Procedures Act at T.C.A. § 4-5-228 to require a state agency filing a rule to “state in a simple declarative sentence without comment on the merits or the policy of the rule, whether the rule or regulation may have a projected financial impact on local governments”. This must be filed with the Secretary of State, presumably with the filing of the rule. This statement must also describe the impact on increases in expenditures or decreases in revenue resulting from the rule.

If the rule has a financial impact on local governments, the Act provides that the General Assembly may ask local government representatives to testify on the rule’s impact.

The Act became effective July 1, 2010.

PUBLIC CHAPTER 1125 (Senate Bill 3385 by Marrero/ House Bill 3475 by Kernell)

The Act amends T.C.A. §4-5-203 of the rulemaking portion of the Uniform Administrative Procedures Act to add a new subsection (f)(1) that will require that if a rule is initially promulgated as an emergency rule, which does not require a public hearing before it becomes effective and which lasts only 180 days, it must be followed by a public hearing under the normal rulemaking hearing rule process which is used to make the rule permanent. Therefore, an emergency rule cannot then be made into a permanent rule by use of the “proposed” rulemaking process under T.C.A. § 4-5-202, which allows a rule to be promulgated as a permanent rule without a public hearing by publication in the Tennessee Administrative Register of notice of the agency’s intent not to hold a public hearing unless the public petitions for such a hearing within 60 days of the first day of the month following publication of the notice.

However, subsection (f)(2) of the Act provides an exception to this new requirement by stating that if the emergency rule is required by the federal government and failure to adopt the rule immediately using the emergency rulemaking process would place in jeopardy federal funding, then the hearing is not required, and the rule could, presumably, be adopted by the “proposed” rulemaking process. The exception to a public hearing requirement would not, however, be applicable if the emergency rule is adopted due to a threat to public health or safety, if it is required by a court order or if an enactment of the General Assembly required adoption of rules by a date that did not allow the use of ordinary rulemaking procedures.

The Act became effective July 1, 2010.

PERSONNEL

PUBLIC CHAPTER 748 (Senate Bill 3848 by Kyle / House Bill 3836 by M. Turner)

This bill amends 8-30-404 of the Tennessee Code Annotated.

Section 1 – The Act removes the June 30, 2010, termination date for revisions to civil service provisions enacted by Chapter 1 of the Public Acts of 2009 to deal with a proposed reduction in workforce. These provisions authorized certain state departments to suspend certain civil service provisions in the event of a reduction in work force. The provisions were originally due to expire June 30, 2010. The Act essentially leaves those provisions in place in case a reduction in force becomes necessary at a later date.

Section 2 – The bill became effective on July 1, 2010.

PUBLIC CHAPTER 794 (Senate Bill 2146 by Ford / House Bill 2101 by Towns)

This bill amends Title 8, Chapter 30, Part 3 of the Tennessee Code Annotated.

Section 1 The Act permits state employees to acquire additional employment so long as no conflict is created with respect to the employee’s work schedule.

Section 2 The Act became effective on April 19, 2010.

PUBLIC CHAPTER 826 (Senate Bill 3590 by Ketron / House Bill 3389 by Moore)

This bill amends Title 8, Chapter 30, Part 2 of the Tennessee Code Annotated.

Section 1 – The Act specifies that the supervisory personnel must be physically present in this state, instead of must be residing in this state, while supervising employees working within Tennessee unless business reasons require out-of-state travel

Section 2 – The Act became effective on April 23, 2010.

TENNCARE/MEDICAID and DISABILITY DETERMINATION SERVICES

PUBLIC CHAPTER 658 (Senate Bill 3529 by Overbey/House Bill 3863 by Coleman)

Public Chapter 658 amends Tennessee Code Annotated Title 35 to add the Tennessee Community Property Trust Act of 2010 as a new chapter at §§ 35-17-101 et seq. The Act provides for the establishment of a Tennessee community property trust by a married couple and sets out required provisions under the Act.

Section 1: Under T.C.A. § 35-17-102, "community property", as it is used in the chapter, is defined as property owned by a "community property trust" during the marriage of the settlor spouses; the term "settlor spouses" is defined as a married couple that establishes a community property trust; and "qualified trustee" is defined as a natural person who is a Tennessee resident or a company authorized to act as a fiduciary under the banks and financial institutions statute at T.C.A. § 45-2-1001.

At T.C.A. § 35-17-103, an arrangement is a community property trust if: (1) one or both spouses transfer property to the trust and expressly declare the trust is a Tennessee community property trust; (2) the trust has at least one qualified trustee with powers to maintain records for the trust on an exclusive, or nonexclusive basis, and with powers to prepare or arrange preparation of any income tax returns filed by the trust and that either or both spouses may be a trustee; (3) the trust is signed by both spouses; and (4) the trust contains the required language in capital letters at the beginning of the trust that "The consequences of this trust may be very extensive, including, but not limited to, your rights with your spouse both during the course of your marriage and at the time of a divorce. Accordingly, this agreement should only be signed after careful consideration. If you have any questions about this agreement, you should seek competent advice".

At T.C.A. § 35-17-104(a), the spouses in the agreement establishing the community property trust may agree on: (1) the rights and obligations in the property transferred to the trust, (2) the management and control of the property transferred to the trust, (3) the disposition of the property transferred to the trust on dissolution, death or occurrence or nonoccurrence of another event; (4) the choice of law governing the

interpretation of the trust; and (5) any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

At T.C.A. § 35-17-104(b), either spouse may amend the community property trust regarding the disposition to take place at death of that spouse's one-half (1/2) share of the community property, and that except for this amendment, a community property trust may not be amended or revoked unless the agreement itself provides for amendment or revocation.

At T.C.A. § 35-17-105(a), any or all property of the spouses may be classified as community property by transferring property to a community property trust and providing in the trust that the property is community property, whether or not both, one, or neither spouse is domiciled in Tennessee; (b) a community property trust is enforceable without consideration; (c) all property owned by the trust will be community property during marriage; (d) the right to manage and control property transferred to the community property trust is determined by the trust's terms; and (e) when property is distributed from the trust, it shall no longer constitute community property.

At T.C.A. § 35-17-106(a), an obligation incurred by one of the spouses during the marriage may be satisfied from that spouse's one-half (1/2) share of the community property trust. Under (b), an obligation incurred by both during the marriage may be satisfied from a community property trust of the spouses.

At T.C.A. § 35-107, upon the death of a spouse, one-half (1/2) of the aggregate value of the property owned by a community property trust reflects the share of the surviving spouse and the other one-half (1/2) reflects the decedent's share. Unless the trust agreement provides otherwise, the trustee has the power to distribute the assets in divided or undivided interests and to adjust resulting differences in valuation.

At T.C.A. § 35-17-108, upon the dissolution of the marriage, the community property trust shall end and the trustee shall distribute one-half (1/2) of the trust assets to each spouse, with each spouse receiving one half of each asset, unless both spouses otherwise agreed in writing.

Section 2: The Act became effective on July 1, 2010.

PUBLIC CHAPTER 725 (Senate Bill 3522 by Overbey/House Bill 3861 by Coleman

This Act amends certain provisions at Tennessee Code Annotated, Title 35 Fiduciaries and Trust Estates. Section 6 of the act is particularly relevant to the Medicaid program as it mentions the special needs trust. However, it should be noted, that this section as well as the Act itself should have no negative impact on the Medicaid program since it seems to only prevent actions against the trust to pay any debts of the settlor of the trust, not the beneficiary of the trust.

Section 1: Amends § 35-6-409 under the Uniform Principal and Income Act at the section titled deferred compensation, annuities and similar payments, relative to payments a trustee receipts in and allocates as income and principal and as relates to the trust qualifying for the estate tax marital deduction.

Section 2: Amends § 36-5-505 under the Uniform Principal and Income Act a trustee would determine the internal income of each separate fund as if the separate fund were a trust subject to this Act. Upon request of the surviving spouse, the trustee would demand that the person administering the separate fund distribute the internal income to the trust. The trustee must allocate a payment from the separate fund to

income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee must allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee must allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal at least 3 percent of the fund's value. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments for the month preceding the accounting period for which the computation is made.

Section 3: Amends § 35-15-302 under the Tennessee Uniform Trust Code at the section titled representation by holder of general testamentary power of appointment. The amendment replaces, "to the extent there is no conflict of interest" with "to the extent there is no material conflict of interest ", in referencing the holder of a general testamentary power of appointment being able to represent and bind the interest of the person represented with respect to a particular question or dispute that is subject to the power.

Section 4: Amends § 35-15-303 under the Tennessee Uniform Trust Code at the section titled representation by fiduciaries and parents. The amendment replaces, "to the extent there is no conflict of interest" with "to the extent there is no material conflict of interest", in referencing to the fiduciary representative being able to represent and bind the interest of the person represented with respect to a particular question or dispute.

Section 5: Amends § 35-15-304 under the Tennessee Uniform Trust Code at the section titled representation by person having substantially identical interest. The amendment replaces, "but only to the extent there is no conflict of interest between the representative and the person represented" with "but only to the extent there is no material conflict of interest between the representative and the person represented", in referencing to another individual having substantially identical interest being able to represent and bind the person represented with respect to the particular question or dispute.

Section 6: Amends T.C.A. § 35-15-505(a)(2) under the Tennessee Uniform Trust Code at the section titled creditor's claims against settlor. The amendment adds irrevocable special needs trust in the (a)(2), exception to provide that an irrevocable special needs trust is not subject to creditor's claims during the lifetime of the settlor.

The current subsection (a)(3) that contains provisions regarding claims and expenses and taxes in connection with the settlement of the settlor's estate at death is renumbered. That subsection becomes (a)(5). The new (a)(3) and (4) at § 35-15-505 adds a definition for irrevocable special needs trust. The new (a)(3) specifies that for the purposes of the § 35-15-505(a)(2) exception from creditor's claims during settlor's lifetime, the irrevocable special needs trust is an irrevocable trust established for the benefit of one or more disabled persons, which includes, but is not limited to, any individual disabled pursuant to 42 USC § 1382c(a). As well, irrevocable special needs trust includes any individual who is disabled pursuant to any similar federal, state or other jurisdictional law or regulation, or has a condition that is substantially equivalent to one that qualifies them to be disabled, under such, even if not officially found to be disabled by a governmental body, if one of the purposes of the trust, expressed in the trust or implied in the trust, is to allow the disabled person to qualify or continue to qualify for public, charitable

or private benefits that might otherwise be available to the disabled person. The definition contains a provision that the existence of one or more nondisabled remainder beneficiaries of the trust shall not disqualify it as an irrevocable special needs trust for the purposes of excepting it from creditor's claims during settlor's lifetime. The new (a)(4) provides that no creditor or assignee of the settlor of the irrevocable special needs trust, as it is defined in (a)(3), may reach or compel distributions from the trust to or for the settlor's benefit regardless of whether or not the trust complies with the Title 35, Chapter 16, Tennessee Investment Services Act.

Section 7: Amends § 35-15-505 under the Tennessee Uniform Trust Code at the section titled creditor's claims against settlor. The amendment adds subsection (d) as a new subsection. The subsection provides that where the settlor of an irrevocable trust made a qualified election under the 26 USC § 2523(f) (the gift and estate tax) any benefit to the settlor arising under the trust agreement or any other provision of law and power of the trustee to make a distribution for the settlor's benefit, or to permit the settlor to use or benefit from trust property following the death of the settlor's spouse, will not be considered an amount distributed for the settlor's benefit, for purposes of the exception concerning creditor's claims against the settlor. The subsection (d) specifies that its provisions do not limit a creditor's remedies under the Uniform Fraudulent Transfer Act regarding the settlor's transfers to such trust.

Section 8: Amends § 35-15-802 under the Tennessee Uniform Trust Code at the section titled duty of loyalty, by renumbering existing subsections (g) through (i) as (j) through (l), deleting current (f), and inserting a new (f) through (i). The amendment expands on existing provisions involving investments by a trustee when dealing with an affiliate of the fiduciary. The amendment provides that in addition to all other permissible investments and delegatable duties listed in Title 35, so long as fairly priced and in the interest of the beneficiaries and the interests of the fiduciary's appointment, a fiduciary may purchase, sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment. The amendment provides that where the disclosures specified in § 35-15-802 (h) have been complied with, the fiduciary may receive compensation at the same rate as the fiduciary would otherwise be entitled to be compensated, and the activities shall occur without any presumption of a conflict between personal and fiduciary interests of the trustee or other fiduciary.

Section 9: Amends § 35-15-813 under the Tennessee Uniform Trust Code at the section titled duty to inform and report. The amendment adds a new subsection (g) to the current provisions that contain requirements regarding the trustee's duty to keep the beneficiaries reasonably informed about the administration of the trust and regarding responding to beneficiary's request for information related to the administration of the trust. The new subsection provides that the trustee is bound by any written confidentiality restrictions with respect to an asset of a trust and the trustee may require that any beneficiary who is eligible to receive information about the asset shall agree in writing to be bound by the confidentiality restrictions that bind the trustee before receiving the information from the trustee.

Section 10: Amends § 35-15-1010 under the Tennessee Uniform Trust Code at the section titled limitation on personal liability of trustee. The amendment removes the current provision that the trustee is personally liable for torts in the course of administering a trust only if the trustee is personally at fault. The amendment inserts as a new provision that the trustee is personally liable for torts committed in the course of administering a trust only if the trustee is personally at fault on account of the trustee's own willful misconduct proven by clear and convincing evidence. The amendment also inserts as a new provision that, except where otherwise provided in § 35-15-1010, the debts, obligations and liabilities incurred by the trustee by reason of the ownership, management or control of trust property in the

trustee's fiduciary capacity shall be enforceable solely against the trust and its property without any obligation or liability personally being borne by any trustee of the trust.

Section 21: Amends Title 35 to add total return unitrusts as a new § 35-17-101. The "total return unitrust" is defined at § 35-17-101(a)(6) as an income trust that has been converted as provided in this section or under the laws of any other jurisdiction that permits an income trust to be converted to a trust in which a unitrust amount is treated as the net income of the trust. Subsection (a)(10) of § 35-17-101 defines "unitrust amount", as an amount computed as a percentage of the fair market value of the trust. Subsections (b) and (c) of § 35-17-101 set out the provisions that apply to conversion of an income trust to a total return unitrust without court approval and (d) sets out the provisions that apply for petitioning the court for an order to convert an income trust to a total return unitrust. Subsection (k) sets out when conversion to a total return unitrust is not available. Subsection (k)(1)(C) specifies § 35-17-101 is not available where the governing instrument expressly prohibits use of § 35-17-101, or the instrument expressly states the trustor's intent that net income not be calculated as a unitrust amount. Subsection (k)(2) specifies § 35-17-101 as not available where the governing instrument contains statements sufficient to preclude the use of § 35-17-101 in respect to the trustee shall not determine the distributions to the income beneficiary as a unitrust amount.

Title 35 is amended to add express total return unitrusts as a new § 35-17-102. Subsection (a) specifies that § 35-17-102 applies to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three percent (3%) nor more than five percent (5%) per year of the fair market value of the trust's assets, valued at least annually. The subsection refers to such trust as an "express total return unitrust".

Section 22: Amends § 35-3-113 under Investment of Trust Funds at the section titled life, endowment or annuity contracts of life insurance companies. The current provisions at subsection (a) authorize executors, trustees and guardians, with the approval of a probate court or other court of competent jurisdiction, to invest, out of income or principal of funds in their custody, in single or annual premium life, endowment or annuity contracts of legal reserve life insurance companies duly licensed and qualified to transact business within the state. The provisions at subsection (c), in effect previous to this amendment, prohibited the contracts from being purchased from any company for which the executor, guardian or trustee is acting as agent, or receives any, or part, commission directly or indirectly paid by the company to its agent soliciting and or selling the contract. This amendment deletes subsection (c) from § 35-3-113.

Section 25: The Act became effective on July 1, 2010.

PUBLIC CHAPTER 865 (Senate Bill 2959 by Watson/House Bill 3049 by Favors)
(See Page 16 for a full description of the Act)

PUBLIC CHAPTER 1065 (House Bill 3114 by S. Jones/ Senate Bill 3101 by Marrero)

The Act amends the current law by adding a new section to Tennessee Code Annotated, Title 37, Chapter 2, Part 4 known as Tennessee's Transitioning Youth Empowerment Act. This presents the possibility that the Department of Children's Services will enlist the Department of Human Services in the provision of services for children aging out of the foster care system.

Section 1 provides the following: The legislation as amended authorizes the Department of Children's Services to develop a program for youth transitioning from state custody. Services may be provided on a voluntary basis (by the Department of Children's Services) for young adults aged 18-21 who are in state custody at the time of their 18th birthday and who meet the following requirements:

- 1) Completing secondary education or a program leading to an equivalent credential
- 2) Enrolled in an institution that provides postsecondary or vocational education
- 3) Participating in a program or activity designed to promote or remove barriers of employment
- 4) Employed for at least 80 hours per month
- 5) Incapable of doing any of the activities described due to a developmental or intellectual condition which is supported by documentation on the permanency plan

Services may also be provided to anyone who meets the aforementioned requirements but refused them at the time of their 18th birthday but seeks to regain them before their 21st birthday. Additionally, the post custody services advisory council will serve as an advisory committee to the program.

Section 2 Authorizes the Commissioner of the Department of Children's Services to establish policies and procedures to implement the program

Section 3 Authorizes the Department of Children's Services to seek federal funding or to participate in federal programs developed for the aforementioned purpose.

Section 4 provides that any person over age 18 that opts into the program must be allowed to remain under juvenile court jurisdiction for purposes of this act.

Section 5 requires that this act take effect on July 1, 2010 with a sunset (repeal) of June 30, 2012. The sunset provision will not impact any programs providing transition services to young adults administered by the Department of Children's Services prior to the effective date of the act.

MISCELLANEOUS

PUBLIC CHAPTER 706 (Senate Bill 3013 by Tracy / House Bill 3007 by Marsh)

This bill amends Title 4, Chapter 1, Part 4 of the Tennessee Code Annotated by adding a new section 408 pertaining to state government efficiency.

Section 1 Requires each agency or department of state government to promote economic efficiency. To this end, each agency and department is encouraged to solicit input and ideas from employees and the general public by creating a public comment portal on its website. A report on economic efficiency shall be included in the annual budget hearing.

Section 2 The Act became effective on March 31, 2010.